(2014) 06 BOM CK 0025

In the Bombay High Court

Case No : Central Excise Appeal Nos. 90 and 265 of 2013

Central Railway APPELLANT

Vs

Commissioner of Central Excise and Customs RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Finance Act, 2013 — Section 99

Citation : (2014) 47 GST 717 : (2015) 38 STR 10

Hon'ble Judges : S.C. Dharmadhikari, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : R.V. Desai, Sr. Advocate and Suresh Kumar, Advocate for the Appellant; Pradeep S. Jetly and Suchitra Kamble, Advocate for the Respondent

Judgement

1. These Central Excise Appeals are by the Central Railway. The Central Railway is aggrieved and dissatisfied with the order passed on the stay application. By the order impugned in the Central Excise Appeal No. 90/2013, namely, the order dated 27.02.2013 the Customs, Excise & Service Tax Appellate Tribunal has disposed of the stay application filed by the Appellant/Central Railway on the condition that it will have to make a pre-deposit of Rs. 25 lacs within a period of eight weeks and report compliance. Since the amount was not deposited, but the order came to be challenged in this Court, the Appeal came to be dismissed. Against dismissal of the said Appeal, the Appellant/Central Railway has filed the Central Excise Appeal No. 265/2013. We have heard Mr. R.V. Desai, learned Senior Counsel appearing in support of these Appeals and Mr. Jetly, learned counsel appearing for the Respondent/Revenue. The order in original has been passed on 13.12.2010 by the Commissioner of Central Excise & Customs, Nagpur. That is in relation to the liability for payment of service tax.

2. Mr. Desai submits that the nature of services provided by the Railway and considering its status in law the Tribunal should not have directed payment of any sum of Rs. 25 lacs. The Railway would have always abided by the final orders and subject to legal rights. There was no necessity of securing the sum

when the financial position and other matters in relation to the Railway were to the knowledge of the Department and the Tribunal. Such harsh order is passed in the teeth of the later clarification given by Section 99 which was brought on the statute book by Finance Act, 2013 with effect from 10.05.2013.

3. Mr. Jetly, on the other hand, submits that the order passed by the Tribunal is discretionary and there cannot be any complaint of the Tribunal acting arbitrarily or capriciously. Resultantly the Appeals do not raise any substantial question of law and they deserve to be dismissed.

4. We are of the opinion that the Tribunal in exercising discretion in this case has failed to take note of a strong prima facie case that was pleaded. Secondly, bearing in mind the nature of services and that the Railway was rendering public service, the balance of convenience was also in favour of the Railway/Appellant before us. In such circumstances there was no reason to pass an order directing payment of the sum of Rs. 25 lacs in the given facts and circumstances. The issue was debatable and there was no apprehension of the Revenue that the amount to be recovered would not be recovered in the event the Revenue succeeds. In these circumstances the Appeals do raise a substantial question of law. Same is formulated as under:--

"Whether, in the facts and circumstances of the case and in law, the Tribunal has failed to exercise its discretion and erred in imposing a condition of pre-deposit on the Indian Railway which was suing through the Central Railway, Divisional Railway Manager Office, Nagpur Division?"

5. After having heard the learned counsel appearing for the parties and perusing Section 99 which came to be inserted by the Finance Act, 2013 with effect from 10.05.2013, we are of the opinion that the Appellants have made out a strong prima facie case and of complete waiver of a pre-deposit condition. The impugned order is, therefore, quashed and set aside. The application for stay/ waiver of pre-deposit is allowed accordingly. However, we clarify that we have not expressed any opinion on the rival contentions and merits of the Appeal. Since we have set aside the impugned order and allowed the application for stay/ waiver of pre-deposit in its entirety, needless to clarify that the Appeal preferred by the Appellant before the Tribunal shall stand revived and restored to its file for disposal on merits and in accordance with law. Both the Appeals are, accordingly, disposed of. No costs.